

Guardianship and Termination of Parental Rights in New Jersey

by Neal J. Berger, Esq.

Guardianship involves the termination of parental rights of the parent or guardian of the child or children. The filing of a Termination of Parental Rights Complaint is often the end result of a proceeding for abuse or neglect.



Under N.J.S.A. 30:4C-15.1 parental rights may be terminated if the following standards are met:

- (1) The child's health and development have been or will continue to be endangered by the parental relationship;
- (2) The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm. Such harm may include evidence that separating the child from his foster parents would cause serious and enduring emotional or psychological harm to the child.
- (3) Child Protection and Permanency, CP&P (formerly the Division of Youth and Family Services, DYFS) has made diligent efforts to provide services to help the parent correct the circumstances which led to the child's placement outside the home and the court has considered alternatives to termination of parental rights; and

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Thousands More Workers Soon Eligible for Overtime Pay

by Beth C. Rogers, Esq.

On December 1, 2016, a change to the overtime laws will take effect and the results will be substantial. Currently, only 7 percent of workers are eligible for overtime; the new rule will push that figure to 35 percent.

Under new regulations from the Labor Department, salaried employees earning up to \$47,476 a year, or \$913 a week, are eligible to receive time-and-a-half pay when they work more than 40 hours a week. Previously, overtime was limited to those earning \$23,660 a year (\$455 a week) or less.

In addition to the wage requirements, the law also provides exemptions based on job duties, including employees employed as bona fide executive, administrative, professional and outside sales employees and certain other employees. To qualify for exemption, employees must meet certain tests regarding their job duties (in addition to the salary requirement). Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations. December 1, 2016 is almost here employers should move quickly to ensure compliance with the new regulations.



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Termination of Parental Rights

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- (4) Termination of parental rights will not do more harm than good.

When determining whether to terminate parental rights, the focus of the inquiry is not only whether the parent is fit, but also “whether he or she can become fit to assume the parental role within time to meet the child’s needs.” Division of Youth & Family Services v M.M., 382 N.J. Super 264, 888 A.2d 512 (A.D. 2006).

In determining whether the parent is unable to eliminate the harm facing the child and whether the delay of permanency will add to the harm, the issue is “whether the parent can cease causing the child harm before any delay in permanent placement becomes a harm in itself.” Division of Youth & Family Services v. A.G., 344 N.J. Super 418, 782 A2d 458, 113 A.L.R. 5th 707 (A.D. 2001).



The burden rests on the Division to demonstrate by “clear and convincing evidence that the risk of serious and lasting future harm to the child is sufficiently great as to require severance of parental ties.” Division of Youth & Family Services v. M.M. (Ibid).

The balance between fundamental parental rights and the State’s *parens patriae* responsibility is achieved through *the best interests of the child*

standard. Merely showing that the child would be better off with the adoptive parent rather than with the biological parent is not enough to terminate parental rights.

The considerations involved in determinations of parental fitnessare extremely fact sensitive and require particularized evidence that address the specific circumstances in the given case.” In re Guardianship of K.H.O., 161 NJ 337, 736 A2d 1246 (1999).

Parental rights must be terminated before a child can be placed for adoption. A final hearing or trial is scheduled to determine whether parental rights should be terminated.

Kinship Legal Guardianship (KLG)

The Kinship Legal Guardianship law became effective January 2002. This law creates a new means of establishing a permanent home for children who cannot reside with their parents due to the long-term incapacity or inability of the parents.

It resolves many issues that may arise for those children who are in the long-term care of family or friends. It assists families by legally recognizing this caregiver relationship providing certain legal rights to caregivers with respect to raising the child to adulthood that include but, are not limited to, educational and medical decisions.

While the KLG arrangement is intended to be a permanent placement until the child reaches eighteen (18) years of age, it does not terminate the parental rights and obligations of the natural parents. Individuals who have provided care and support for a child (not their own) in their home for at least twelve (12) consecutive months and, who are eighteen (18) years of age or older, may petition for kinship legal guardianship status.

The court may provide for an order permitting parenting time/visitation with the child for a birth parent. An award of Kinship Legal Guardianship does not relieve a parent of the responsibility to provide for the support of a child if so ordered by the court.

An award of Kinship Legal Guardianship does not affect the rights of inheritance and eligibility for benefits or insurance for the child.